

JULY 1, 2014 THROUGH JUNE 30, 2019

CONSUMER DIRECTED SERVICES

PROGRAM REQUIREMENTS

1.0 PURPOSE

To provide for the delivery of consumer directed services (“CDS”) authorized to Department of Health and Senior Services (“DHSS”), Division of Senior and Disability Services (“DSDS”) consumers in residential settings in compliance with §§208.900 – 208.930, RSMo Supp. 2009, 19 CSR 15-8 and the requirements of this agreement.

2.0 DELIVERABLES

- 2.1 The Vendor shall provide services as set forth in §§208.900 – 208.930, RSMo Supp. 2009 and the regulations promulgated thereunder, to DHSS consumers. The Vendor shall designate the counties in which it will provide services and shall request authorization, in writing, to add/remove any county from the Vendor’s designated service area by completing a Change Request form located at this link: <http://mmac.mo.gov/providers/provider-enrollment/home-and-community-based-services/provider-contracts-forms/>. The Vendor agrees and understands that no change can take place in its service commitment area prior to Department of Social Services (“DSS”), Missouri Medicaid Audit and Compliance Unit (“MMAC”) approval of the proposed change.
- 2.2 The Vendor shall ensure delivery of services to all authorized consumers of the DHSS and accepted by the Vendor on a dependable and regular basis and ensure all services will be delivered strictly in accordance with the consumer’s care plan approved by the DHSS.
- 2.3 The Vendor shall, at all times, maintain the ability to be in contact with all authorized consumers of the DHSS being served by the Vendor, the client’s representative, the MMAC and the DHSS. Maintaining the ability to be in contact with authorized consumers of the DHSS being served by the Vendor, the MMAC, and the DHSS shall mean, at a minimum:
 - a. Maintaining business telephone number(s) that is/are answered twenty-four (24) hours a day, seven (7) days a week identifying the Vendor’s name. The Vendor shall not use telephone services intended to block or restrict incoming calls.
 - b. Maintaining a principal place of business that is open for business and has staff on site during posted business hours. The Vendor understands and agrees that business hours for its principal place of business shall be conspicuously posted.
 - c. Informing the MMAC all satellite office(s) that is/are open for business and has staff on site during posted business hours. The Vendor understands and agrees that business hours for its satellite office(s) shall be conspicuously posted. Satellite office(s) that are neither intended to serve authorized consumers nor are serving authorized consumers do not need to be reported to the MMAC.
 - d. Posting and distributing its business hours to all authorized consumers of the DHSS being served by the Vendor, and the MMAC, in an effort to ensure effective communication and flow of service delivery.
 - e. Informing all authorized consumers of the DHSS being served by the Vendor at the time such consumer is accepted for services, and the MMAC, in writing, of the business telephone number(s), the exact street address, including any apartment or suite number, and business hours of the principal place of business and satellite office(s), if applicable.
 - f. Informing all authorized consumers of the DHSS being served by the Vendor and the MMAC, of any and all changes regarding the exact street address, mailing address, business hours, telephone number(s), fax number(s) and e-mail address of the principal place of business and satellite office(s), if applicable. The MMAC shall be notified by submitting a Change Request form located at this link: <http://mmac.mo.gov/providers/provider-enrollment/home-and-community-based-services/provider-contracts-forms/>. The Vendor agrees and understands that such notification shall be made in writing at least five (5) working days before any change takes place.
 - g. Maintaining access to the Internet in order to retrieve information posted on the MMAC and DHSS websites.
 - h. Maintaining an e-mail address in order to communicate with the MMAC and DHSS and receive written communications.

- i. Maintaining subscription to the DSDS E-News ListServ at all times.

3.0 PROGRAM BILLING AND NON-MO HEALTHNET REIMBURSEMENT

- 3.1 The rate of reimbursement per unit of service shall be the rate as established by the Missouri General Assembly. In the event that funds are not appropriated for this program, the Vendor shall not prohibit or otherwise limit the DHSS's right to pursue and enter into amended or new agreements for alternative solutions and remedies as deemed necessary for the conduct of state government affairs.
 - 3.1.1 The Vendor understands and agrees that the continuation of the Independent Living Waiver Program is subject to renewal by the federal agency, Centers for Medicare and Medicaid Services (CMS) and/or subject to the State of Missouri appropriations' process and the United States Federal Government reimbursement process.
- 3.2 The Vendor will comply with all applicable state and federal laws as they pertain to employment and labor standards.
- 3.3 Any reimbursement due the Vendor shall be made by the DHSS on behalf of a non-MO HealthNet eligible consumer as an act of indirect or third party reimbursement. The Vendor shall submit an invoice to the DHSS on forms approved by the DHSS for reimbursement within thirty (30) days of the end of the month in which services were delivered to authorized non-MO HealthNet eligible consumers of the DHSS being served by the Vendor. Billing forms are located at the following link: <http://health.mo.gov/seniors/hcbs/appsforms.php>.
 - 3.3.1 The Vendor is not entitled to reimbursement if invoices are submitted more than ninety (90) days after the expiration date of this Agreement. The Vendor may not receive reimbursement if invoices are not submitted in time for processing prior to the end of the state fiscal year. There is no guarantee of reimbursement if invoices are submitted for months of service in prior fiscal years.
- 3.4 In addition to the uniquely identifiable invoice number required to be submitted pursuant to the Terms and Conditions attached hereto, the Vendor's invoices shall include the invoice date (the date the invoice was submitted for reimbursement), consumer(s) served, each consumer's Departmental Client Number (DCN), services provided and dates of service delivery.
 - 3.4.1 All invoices must be sent to:

Missouri Department of Health and Senior Services
Division of Senior and Disability Services/LTACS
P.O. Box 570
912 Wildwood Dr.
Jefferson City, MO 65102-0570
- 3.5 If the Vendor is overpaid by DHSS, the Vendor shall issue a check made payable to "DHSS-DOA Fee Receipts" upon official notice from DHSS and shall mail the payment to DHSS. When the Vendor submits an overpayment check, the Vendor shall accompany the check with a letter explaining the circumstances or with a supplemental invoice (DA-215). The Vendor shall include the month of service for which the overpayment was made, the DCN of the consumer(s) to whom the overpayment is attributed, and the number of units and types of services. If a supplemental invoice is used, the Vendor shall show the number and type of overpaid units as a negative. If the DHSS determines it has overpaid the Vendor, the DHSS may recoup the overpayment from subsequent reimbursements owed to the Vendor.
- 3.6 If a request by the Vendor for reimbursement is denied the DHSS shall provide the Vendor with written notice of the reason(s) for denial.
- 3.7 If the Vendor has not already submitted a properly completed State Vendor Automated Clearing House Electronic Funds Transfer (ACH/EFT) Application for deposit into a bank account of the Vendor, such application shall be completed and submitted per this section, as the DHSS will make payments to the Vendor through Electronic Funds Transfer. Payment will be delayed until the ACH/EFT Application is completed and approved.
 - 3.7.1 A copy of the Vendor Input/ACH-EFT Application and completion instructions may be obtained from the Internet at: <http://oa.mo.gov/acct/>.
 - 3.7.2 The Vendor must fax the Vendor Input/ACH-EFT Application to: Office of Administration, Division of Accounting at 573/526-9813.

4.0 PERSONAL CARE ATTENDANTS

- 4.1 The Vendor shall ensure all personal care attendants, including those related to the consumer, are registered, screened and employable pursuant to the Family Care Safety Registry (FCSR) and the Employee Disqualification List (EDL) and the applicable regulations.
- 4.2 The Vendor agrees to maintain documentation in its files that verifies the adoption, implementation and enforcement of the following policies in screening persons for eligibility as a personal care attendant:
 - 4.2.1 All personal care attendants shall complete an employment application. The application shall include:
 - 4.2.1.a A question requiring disclosure of all criminal convictions, findings of guilt, pleas of guilty, and pleas of nolo contendere except minor traffic offenses.
 - 4.2.1.b A consent to a pre-employment criminal record check.
 - 4.2.1.c A consent to a closed records check pursuant to Section 610.120, RSMo.
 - 4.2.1.d A question requiring disclosure of all aliases and social security numbers used by the applicant.
 - 4.2.2 The Vendor shall maintain in its files copies of all screening information to document screening was conducted pursuant to State and Federal laws and regulations.
 - 4.2.3 FCSR and EDL checks shall be performed for all aliases and social security numbers utilized by such persons.
- 4.3 In the event the Vendor allows a consumer to employ any personal care attendant who is not registered, screened and employable pursuant to this Agreement, the MMAC and DHSS shall not make reimbursement for any services provided. The Vendor agrees to repay any and all amounts paid for services performed in violation of these provisions to the MMAC and DHSS.
- 4.4 The Vendor must enroll as an Organized Health Care Delivery System (OHCDs) and meet all federal regulations.
 - 4.4.1 The Vendor must have a contract with each consumer's personal care attendant and meet all federal regulations.
- 4.5 If the Vendor meets the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo the Vendor shall maintain enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the contracted services included herein. If the Vendor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then the Vendor shall, prior to the performance of any services as a business entity under the contract:
 - (1) Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
 - (2) Provide to the MMAC the documentation required in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; AND
 - (3) Submit to the MMAC a completed, notarized Affidavit of Work Authorization provided in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

5.0 SPECIAL PROVISIONS

- 5.1 The Vendor agrees and understands this Agreement is predicated on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in the Vendor's original proposal, as amended and approved by the MMAC.
 - 5.1.1 The Vendor agrees to immediately notify the MMAC in writing whenever a substitution of the executive director and CDS coordinator has occurred.

- 5.1.2 The Vendor further agrees that the MMAC must review any substitution made relative to this paragraph in writing. A substitution may require that the Vendor submit to the MMAC additional documentation to verify the adequacy of the substitute.
- 5.2 The Vendor shall ensure all employees of the Vendor and all personal care attendants, including those related to the consumer are not listed on the U.S. Department of Health and Human Services, Office of Inspector General, List of Excluded Individuals/Entities (LEIE) (<http://exclusions.oig.hhs.gov/>). Employees and attendants must be screened monthly. All known aliases of the employees and personal care attendants must be screened. The Provider shall maintain in its files verification of the LEIE screenings. Any exclusion information discovered must be immediately reported to MMAC.
- 5.3 The Vendor shall be responsible for verifying whether the certifications, licenses, and degrees of all its personnel and those of its subcontracted personnel are current and in good standing, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this Agreement; and documentation of such licensure or certification or degrees shall be maintained by the Vendor and made available to the MMAC and DHSS or its designee upon request.
- 5.4 The Vendor agrees and understands that consumers authorized by the DHSS have the right to utilize the Vendor of their choice and the MMAC and the DHSS make no representations concerning the number of consumers who will choose the services of the Vendor.
- 5.5 The Vendor agrees and understands that refusal or failure to deliver consumer directed services to any consumer authorized by the DHSS and accepted by the Vendor may constitute a breach of the Agreement unless prior approval has been obtained from the DHSS. It shall be deemed a material breach of this agreement for the Vendor to limit its acceptance of consumers for service to any particular group or subgroup of consumers.
- 5.6 In the event the Vendor maintains this Agreement for six (6) consecutive months without accepting for service and actually delivering service to at least one (1) consumer, the MMAC reserves the right to cancel this Agreement upon written notice.
- 5.7 The MMAC reserves the right to extend this Agreement two (2) years beyond its expiration date through the execution of an Agreement Amendment. The Vendor agrees and understands that the MMAC may require supplemental information to be submitted by the Vendor prior to any amendment being granted.
- 5.8 In order to remain a Vendor after the expiration of this participation agreement, the Vendor shall be required to apply to become a Medicaid Vendor in accordance with MMAC regulations and Medicaid Vendor applications and any supplemental forms and information required.
- 5.9 The Vendor shall not assign any interest in this Agreement and shall not transfer any interest, whatsoever, in this Agreement without the prior written consent of the MMAC. The Vendor shall make full, complete and accurate disclosure of its business organization. The Vendor shall notify the MMAC at least forty-five (45) days before a change of ownership of the Vendor's business. For the purpose of this requirement, a change of ownership shall be defined as:
- a) In the case of a partnership, a deletion, substitution or addition of a general partner; or
 - b) In the case of a proprietary corporation, the sale of stock to an individual, corporation or any business entity such that the buying person or entity acquires ownership of five (5) percent or more of the outstanding stock shares, or the sale of the majority of corporate assets to any party; or
 - c) In the case of a sole proprietorship, the sale or transfer of any part of the Vendor's business to any other person or business entity equal to or exceeding five (5) percent of the Vendor's business; or
 - d) In the case of a limited liability company, the deletion, substitution or addition of any investing person or business entity by sale, lease or transfer of any kind.
- 5.10 The Vendor shall not allow any official or employee of the DHSS or the MMAC, nor any other public official of the State of Missouri who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services covered by this Agreement, to acquire any interest, pecuniary or otherwise, in this Agreement, and the establishment with or transfer of such interest to such an official or state employee shall constitute a material breach of this Agreement.

- 5.11 The Vendor warrants that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The Vendor further warrants that no person having any such interest shall be employed or conveyed an interest, directly or indirectly, in this Agreement. Additionally, the Vendor agrees to immediately report any such conflict of interest to the MMAC and warrants that none now exists.
- 5.12 The Vendor shall have a policy to maintain a drug free workplace.
- 5.13 The Vendor shall develop policies and a plan to work with the DHSS and the MMAC regarding service delivery during times of natural disasters such as earthquakes and floods and man-made disasters such as bombs and bioterrorism.
- 5.13.1 The plan must include working with the Vendor's local emergency operation centers for the affected areas.
- 5.14 The Vendor shall have an annual audit conducted by a Missouri licensed Certified Public Accountant in accordance with auditing standards generally accepted in the United States and pursuant to the applicable regulations.
- 5.14.1 The Vendor shall be responsible for the cost of the annual audit requirements.
- 5.15 The Vendor shall develop policies and a plan for the consumer to have a backup attendant and emergency plan.
- 5.16 The Vendor shall report to the Elder Abuse Hotline (1-800-392-0210) any instances of elder abuse, neglect or exploitation pursuant to state law (Sections 660.250 through 660.320, RSMo, Section 565.188 RSMo, and Sections 208.900 – 208.930, RSMo Supp. 2009) and to the Child Abuse/Neglect Hotline (1-800-392-3738) any instances of child abuse or neglect pursuant to state law (Sections 210.109 through 210.183, RSMo). The Vendor also shall comply with Sections 198.070 and 198.090, RSMo, regarding abuse or neglect of long-term care facility residents. The Vendor shall cooperate fully with employees and agents of the DHSS and the DSS-MMAC conducting investigations pursuant to these state statutes.
- 5.17 The Vendor acknowledges that Vendor Memoranda subsequently issued by the DHSS and the MMAC are intended to offer clarification and guidelines for service delivery expectations.
- 5.18 The MMAC shall monitor the Vendor's performance under the terms of this Agreement, Sections 208.900 – 208.930, RSMo Supp. 2009, the regulations promulgated thereunder, and any and all other applicable federal and state laws and regulations.
- 5.18.1 The Vendor's failure or refusal to allow the DHSS or the MMAC to monitor its performance under the terms of this Agreement, Sections 208.900 – 208.930, RSMo Supp. 2009, the regulations promulgated thereunder, and any and all other applicable federal and state laws and regulations, shall constitute a material breach of the Agreement.
- 5.18.2 The findings of the monitoring shall be disclosed to the Vendor and, as necessary, a statement of deficiencies will be issued relating to the Vendor's compliance.
- 5.18.2.a Within ten (10) calendar days of receipt of the statement of deficiencies, the Vendor shall submit to the MMAC an acceptable written plan of correction addressing areas found to be out of compliance.
- 5.18.2.b The Vendor shall correct the violations identified in the statement of deficiencies within forty-five (45) calendar days of the initial exit conference.
- 5.18.2.c Notwithstanding the foregoing, the MMAC may impose sanctions, invoke changes to this Agreement and/or terminate this Agreement as provided in this Agreement and in 19 CSR 15-8.400 prior to submission of a plan of correction and/or correction of the violations.
- 5.19 The Vendor agrees and understands that, in the event that services are delivered and billed by the Vendor to the Title XIX MO HealthNet Program under a Participation Agreement with the MO HealthNet Division, the Vendor must also allow the MMAC to monitor all aspects of MO HealthNet service delivery under the same terms and conditions as the monitoring of this Agreement. Failure to allow the MMAC to monitor MO HealthNet performance shall constitute a material breach of this Agreement and will result in termination of this Agreement.

- 5.20 The Vendor's principal place of business and satellite office(s), if applicable, shall have staff on the premises with access to records during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, at the MMAC's request for the purpose of records examination and/or employee interviews.
- 5.21 The Vendor agrees, understands and acknowledges that when the DHSS authorizes services for individuals, those individuals are considered consumers of the DHSS and the purpose of this Agreement for the MMAC and the DHSS is the prevention of Medicaid XIX fraud, waste, and abuse and the orderly, efficient and dependable delivery of services to a population of consumers who are vulnerable and at risk. Therefore, the Vendor agrees and understands that the MMAC reserves the right to unilaterally, but upon written notice, invoke the following changes in the Agreement when either has cause to do so. These changes may be invoked by the MMAC upon material breach or for any other cause when the performance of the Vendor, though not rising to the level of a material breach, has impaired the purpose of this Agreement. The MMAC may, after written notice to the Vendor, invoke any one or more of the following changes as temporary or permanent sanctions of the Vendor which, if invoked for reasonable cause, shall not constitute a breach of the Agreement by the MMAC:
- 5.21.1 Elimination of one or more counties from the Vendor's authorized service commitment area and the subsequent transfer of consumers served in those counties to other Vendors; and/or
 - 5.21.2 Prospective cessation, temporarily or permanently, of new consumer service authorizations to the Vendor, either for certain identified counties in the Vendor's authorized service area or for all counties served by the Vendor; and/or
 - 5.21.3 Demand that the Vendor make certain assurances in lieu of cancellation of the Agreement, including but not limited to audits or financial assurances to satisfy the DHSS; and/or
 - 5.21.4 Any similar remedies reasonably calculated to correct or prevent further impairment of the Agreement or delivery of service by the Vendor or personal care attendant that is substandard, delivered in a substandard manner or delivered but not documented according to the requirements of this Agreement.
 - 5.21.5 Nothing in this section shall prohibit MMAC from imposing other sanctions as permitted by federal and state laws and regulations, up to and including, termination of this Agreement.
- 5.22 If the Vendor commits nonfeasance, misfeasance or malfeasance, such conduct shall constitute a material breach of this Agreement and will result in termination of this Agreement.
- 5.23 The Vendor shall maintain case files and records of all its activities pursuant to the Agreement and applicable statutes and regulations. These records shall be legible, accurate, genuine and complete records of all its activities pursuant to the Agreement and applicable statutes and regulations. These records shall include, but not be limited to, records to verify the delivery of services pursuant to the terms of this Agreement and applicable statutes and regulations. The Vendor agrees to make all of its records, which in the judgment of the DHSS or the MMAC are related in any way to the performance of this Agreement, available for examination and/or copying (which copying may either be on equipment belonging to the Vendor or on equipment supplied by the MMAC or DHSS using the Vendor's electrical service) without restriction, upon request by the DHSS or the MMAC or its designated representatives, and to such federal and/or state agencies as may request such information. Further, the Vendor agrees to cooperate with all investigations and monitoring and to provide unrestricted access to all staff, volunteers, and consultants for the purpose of discussions interviews, and interrogations that in the DHSS or the MMAC's judgment are related to the provision of services pursuant to this Agreement. The Vendor also agrees that failure to comply with this provision shall be deemed a material breach of this Agreement, which will result in termination of this Agreement, and to repay to the DHSS or the MMAC all amounts received for any services which are not adequately verified and fully documented by the Vendor's records.
- 5.23.1 Adequate verification and full documentation shall mean that the Vendor's records are such that an orderly examination by a reasonable person is possible and can be conducted without the use of information extrinsic to the records and that such an examination can readily determine that the Vendor's services and consumer directed services were provided, including, but not limited to, the identity of the consumer, date, time, place, nature of the services and by whom services were provided. Notwithstanding any provisions of Paragraph 5 of the Terms and Conditions, attached hereto, the Vendor shall keep adequate, legible, genuine, accurate, and complete records to verify the delivery of services pursuant to the terms of this Agreement and applicable statutes and regulations for a minimum period of six (6) years following the Agreement's expiration.

- 5.24 Specialized medical supplies and/or equipment paid for by the Vendor on behalf of the consumer shall be prior authorized by the DHSS and shall be the property of the consumer.
- 5.25 The Vendor agrees to perform all services under this Agreement in compliance with this Agreement and in compliance with all applicable state and federal statutes and all regulations lawfully promulgated.
- 5.25.1 Such compliance includes, but is not limited to,
- 5.25.1.a Timely payment and timely filing returns and reports required for federal and state employment taxes, withholdings, and contributions, including FICA (social security), Medicare, federal income tax withholding, FUTA (federal unemployment insurance), state income tax withholding, and state unemployment insurance tax (employment security contributions).
- 5.26 For Vendors of the Independent Living Waiver (ILW), also enrolled in the Financial Management Services (FMS) Program, the Vendor is responsible for the following requirements in addition to any others included in these Program Requirements.
- 5.26.1 The Vendor shall ensure that environmental accessibility adaptations paid for by the Vendor on behalf of the consumer and reimbursable through this program shall be performed by competent licensed contractors and shall comply with all applicable local and county code requirements.
- 5.26.2 The Vendor shall expressly understand and agree that the responsibility for all legal and financial obligations related to the execution of a subcontract rests solely with the Vendor. The Vendor shall assure and maintain documentation that any and all subcontractors comply with state, federal or local law, statute or regulation; all requirements of this Agreement; and documentation of such compliance shall be maintained by the Vendor and made available to the MMAC and DHSS or their designees upon request.
- 5.26.3 The Vendor shall ensure that specialized medical equipment and supplies paid for by the Vendor on behalf of the consumer and reimbursable through this program shall be purchased from qualified providers of medical equipment and supplies who meet all state and local licensure and or certification requirements as applicable. In addition are enrolled with MO HealthNet Division as a State Plan Durable Medical Equipment provider or be registered and in good standing with the Missouri Secretary of State's office.

6.0 BUSINESS ASSOCIATE PROVISIONS

- 6.1 Health Insurance Portability and Accountability Act of 1996, as amended - The state agency and the contractor are both subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein. The contractor constitutes a "Business Associate" of the state agency. Therefore, the term, "contractor" as used in this section shall mean "Business Associate."
- 6.1.a. The contractor agrees that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR Parts 160 and 164 and 42 U.S.C. §§ 17921 et. seq. including, but not limited to the following:
- 1) "Access", "administrative safeguards", "confidentiality", "covered entity", "data aggregation", "designated record set", "disclosure", "hybrid entity", "information system", "physical safeguards", "required by law", "technical safeguards", "use" and "workforce" shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.
 - 2) "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. § 17921. This definition shall not apply to the term "breach of contract" as used within the contract.
 - 3) "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the contractor.

- 4) "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the state agency.
- 5) "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified below.
- 6) "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.
- 7) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- 8) "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
- 9) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 10) "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:
 - (a) Except as provided in paragraph (b) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
 - (b) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity (state agency) in its role as employer.
- 11) "Security Incident" shall be defined as set forth in the "Obligations of the Contractor" section of the Business Associate Provisions.
- 12) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
- 13) "Unsecured Protected Health Information" shall mean Protected Health Information that is not secured through the use of a technology or methodology determined in accordance with 42 U.S.C. § 17932 or as otherwise specified by the secretary of Health and Human Services.

6.1.b. The contractor agrees and understands that wherever in this document the term Protected Health Information is used, it shall also be deemed to include Electronic Protected Health Information.

6.1.c. The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the state agency. To provide reasonable assurance of appropriate safeguards, the contractor shall comply with the business associate provisions stated herein, as well as the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) and all regulations promulgated pursuant to authority granted therein.

6.1.d. The state agency and the contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, Enforcement Rule, and other rules as later promulgated (hereinafter referenced as the regulations promulgated thereunder). Any ambiguity in the contract shall be interpreted to permit compliance with the HIPAA Rules.

6.2 Permitted Uses and Disclosures of Protected Health Information:

- 6.2.a The contractor may not use or disclose Protected Health Information in any manner that would violate Subpart E of 45 CFR Part 164 if done by the state agency, except for the specific uses and disclosures in the contract.
- 6.2.b The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the state agency as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.
- 6.2.c The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the state agency by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.
- 6.2.d If required to properly perform the contract and subject to the terms of the contract, the contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the contractor's business.
- 6.2.e If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.
- 6.2.f If applicable, the contractor may use Protected Health Information to provide Data Aggregation services to the state agency as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 6.2.g The contractor may not use Protected Health Information to de-identify or re-identify the information in accordance with 45 CFR 164.514(a)-(c) without specific written permission from the state agency to do so.
- 6.2.h The contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the state agency's minimum necessary policies and procedures.

6.3 Obligations and Activities of the Contractor:

- 6.3.a The contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law, and shall comply with the minimum necessary disclosure requirements set forth in 45 CFR § 164.502(b).
- 6.3.b The contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards shall include, but not be limited to:
 - 1) Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;
 - 2) Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;
 - 3) Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;
 - 4) Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and
 - 5) Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.
- 6.3.c With respect to Electronic Protected Health Information, the contractor shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that contractor creates, receives, maintains or transmits on behalf of the state agency and comply with Subpart C of 45 CFR Part 164, to prevent use or disclosure of Protected Health Information other than as provided for by the contract.

- 6.3.d In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), the contractor shall require that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the contractor agrees to the same restrictions, conditions, and requirements that apply to the contractor with respect to such information.
- 6.3.e By no later than ten (10) calendar days after receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall make the contractor's internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by, or received by the contractor on behalf of the state agency available to the state agency and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules and the contract.
- 6.3.f The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the state agency to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 42 USCA §17932 and 45 CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the state agency. If requested by the state agency or the individual, the contractor shall provide an accounting of disclosures directly to the individual. The contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the state agency upon request.
- 6.3.g In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, the contractor shall, within five (5) calendar days following a state agency request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, provide the state agency access to the Protected Health Information in an individual's designated record set. However, if requested by the state agency, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.
- 6.3.h At the direction of the state agency, the contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.
- 6.3.i The contractor shall report to the state agency's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.
- 6.3.j The contractor shall report to the state agency's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the contractor becomes aware of any such use or disclosure, the contractor shall provide the state agency's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures.
- 6.3.k The contractor shall report to the state agency's Security Officer any breach immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any

such incident. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of the breach, the information compromised by the breach, and any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan for approval that describes plans for preventing any such future incidents.

- 6.3.l The contractor's reports required in the preceding paragraphs shall include the following information regarding the security incident, improper disclosure/use, or breach, (hereinafter "incident"):
- 1) The name, address, and telephone number of each individual whose information was involved if such information is maintained by the contractor;
 - 2) The electronic address of any individual who has specified a preference of contact by electronic mail;
 - 3) A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;
 - 4) A description of the types of Protected Health Information involved in the incident (such as full name, Social Security Number, date of birth, home address, account number, or disability code) and whether the incident involved Unsecured Protected Health Information; and
 - 5) The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.
- 6.3.m Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR Part 164.
- 6.3.n Contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.
- 6.3.o If the contractor becomes aware of a pattern of activity or practice of the state agency that constitutes a material breach of contract regarding the state agency's obligations under the Business Associate Provisions of the contract, the contractor shall notify the state agency's Security Officer of the activity or practice and work with the state agency to correct the breach of contract.
- 6.3.p The contractor shall indemnify the state agency from any liability resulting from any violation of the Privacy Rule or Security Rule or Breach arising from the conduct or omission of the contractor or its employee(s), agent(s) or subcontractor(s). The contractor shall reimburse the state agency for any and all actual and direct costs and/or losses, including those incurred under the civil penalties implemented by legal requirements, including but not limited to HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act, and including reasonable attorney's fees, which may be imposed upon the state agency under legal requirements, including but not limited to HIPAA's Administrative Simplification Rules, arising from or in connection with the contractor's negligent or wrongful actions or inactions or violations of this Agreement.

6.4 Obligations of the State Agency:

- 6.4.a The state agency shall notify the contractor of limitation(s) that may affect the contractor's use or disclosure of Protected Health Information, by providing the contractor with the state agency's notice of privacy practices in accordance with 45 CFR 164.520.
- 6.4.b The state agency shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.

- 6.4.c The state agency shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the state agency has agreed to in accordance with 45 CFR 164.522.
- 6.4.d The state agency shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.

6.5 Expiration/Termination/Cancellation - Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the contractor shall, at the discretion of the state agency, either return to the state agency or destroy all Protected Health Information received by the contractor from the state agency, or created or received by the contractor on behalf of the state agency, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractor or agents of the contractor.

- 6.5.a In the event the state agency determines that returning or destroying the Protected Health Information is not feasible, the contractor shall extend the protections of the contract to the Protected Health Information for as long as the contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the contractor must notify the state agency and obtain instructions from the state agency for either the return or destruction of the Protected Health Information.

6.6 Breach of Contract – In the event the contractor is in breach of contract with regard to the business associate provisions included herein, the contractor agrees that in addition to the requirements of the contract related to cancellation of contract, if the state agency determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the state agency shall report the breach of contract to the Secretary of the Department of Health and Human Services.

7.0 Affidavit of Work Authorization and Documentation

- 7.1 Pursuant to section 285.530, RSMo, if the Contractor meets the section 285.525, RSMo definition of a “business entity” (<http://www.moga.mo.gov/statutes/C200-299/2850000525.HTM>), the Contractor must affirm the Contractor’s enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services requested herein. The Contractor should complete applicable portions of Exhibit I Business Entity Certification, Enrollment Documentation and Affidavit of Work Authorization. The applicable portions of Exhibit I must be submitted prior to an award of a contract.

EXHIBIT I
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION

BUSINESS ENTITY CERTIFICATION:

The contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

- BOX A:** To be completed by a non-business entity as defined below.
- BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.
- BOX C:** To be completed by a business entity who has already submitted documentation with a notarized date on or after **September 1, 2009**, to a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- ☐ I am a self-employed individual with no employees; **OR**
- ☐ The company that I represent utilizes the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Company/Individual Name) is awarded a contract for the services requested herein under Consumer Directed Services and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, _____ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the MMAC with all documentation required in Box B of this exhibit.

Authorized Representative's Name
(Please Print)

Authorized Representative's Signature

Company Name (if applicable)

Date

EXHIBIT I, continued

BOX B – CURRENT BUSINESS ENTITY STATUS

(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

I certify that _____ (Business Entity Name) **MEETS**
the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530.

Authorized Business Entity
Representative's Name
(Please Print)

Authorized Business Entity
Representative's Signature

Business Entity Name

Date

E-Mail Address

As a business entity, the contractor must perform/provide the following. The contractor should check each to verify completion/submission:

- ☐ Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- ☐ Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed, at a minimum, by the contractor and the DHSS of Homeland Security – Verification Division. If the signature page of the MOU lists the contractor's name and company ID, then no additional pages of the MOU must be submitted; AND
- ☐ Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

EXHIBIT I, continued

AFFIDAVIT OF WORK AUTHORIZATION:

The contractor who meets the section 285.525, RSMo definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now _____ (Name of Business Entity Authorized Representative) as _____ (Position/Title) first being duly sworn on my oath, affirm _____ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly represent as an eligible attendant, bill for services provided by, nor employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

Authorized Representative's Signature

Printed Name

Title

Date

E-Mail Address

Subscribed and sworn to before me this _____ of _____. I am
(DAY) (MONTH, YEAR)
commissioned as a notary public within the County of _____, State of
(NAME OF COUNTY)
_____, and my commission expires on _____.
(NAME OF STATE) (DATE)

Signature of Notary

Date

EXHIBIT I, continued

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

(Complete the following if you have the E-Verify documentation and an Affidavit of Work Authorization, dated and signed September 1, 2009 or after, already on file with the State of Missouri. If completing Box C, do not complete Box B.)

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed by the contractor and the Department of Homeland Security – Verification Division.
- ✓ A completed, notarized Affidavit of Work Authorization signed and dated on or after **September 1, 2009**.

Name of **Missouri State Agency** or **Public University*** to Which Previous E-Verify Documentation Submitted: _____

(*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.)

Date of Previous E-Verify Documentation Submission: _____

Previous **Bid/Contract/ERS Number** for Which Previous E-Verify Documentation Submitted: _____

(if known)

Authorized Business Entity
Representative's Name
(Please Print)

Authorized Business Entity
Representative's Signature

E-Verify MOU Company ID
Number

E-Mail Address

Business Entity Name

Date

FOR STATE USE ONLY:

Documentation Verification Completed By:

Buyer

Date